

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROLLAND REVELS,

ORDER

Plaintiff,

10-cv-279-bbc

v.

UNITED WISCONSIN INSURANCE COMPANY
and UNICARE LIFE AND HEALTH INSURANCE COMPANY,

Defendants.

Plaintiff originally filed this suit against defendants United Wisconsin Insurance Company and Unicare Life and Health Insurance Company in the Circuit Court for Dane County, seeking damages for alleged breach of contract and breach of duty of good faith and fair dealing arising out of the denial of benefits under his employer's long-term disability policy. On May 25, 2010, defendants removed the case to this court, contending that this court has jurisdiction under 28 U.S.C. § 1331 because plaintiff's action is governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1453 (ERISA). Defendants have filed a motion to dismiss plaintiff's complaint, dkt. #3, contending that plaintiff's claims are completely preempted by ERISA.

Plaintiff does not deny that ERISA preempts state law claims, but contends that his claims are in fact ERISA claims, based on denial of benefits. Plaintiff requests that the court

deny defendants' motion to dismiss or in the alternative, allow plaintiff leave to amend his complaint to clarify that he has brought his claims under ERISA. I agree with defendants that it is not clear from plaintiff's complaint whether he is intending to assert claims under ERISA or state law. At present, plaintiff's complaint violates Fed. R. Civ. P. 8 because it fails to provide notice of plaintiff's specific claims to defendants. However, because plaintiff can remedy this problem by filing an amended complaint, I will give him until July 30, 2010, in which to file an amended complaint.

ORDER

IT IS ORDERED that plaintiff Rolland Revels may have until July 30, 2010 in which to file and serve a proposed amended complaint setting out a claim under ERISA. If plaintiff fails to file an amended complaint by July 30, this case will be closed.

Entered this 20th day of July, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge